

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK NC 27711

April 8, 1994

MEMORANDUM

SUBJECT: Air Quality Operating Permits Programs
Which Apply to Tribal Lands

FROM: Kirtley Q. Cox, Chief
Operating Permits Policy Section, PPB (MD-15)

TO: Indian Coordinator, EPA Regions I-II, IV-X

As part of our outreach efforts, we have sent the attached letter and fact sheet (covering 40 CFR Parts 70 and 71) to approximately 300 Indian Tribes.

Please direct your questions to Ms. Candace Carraway of my staff at (919) 541-3189.

Attachment

cc: E. Lillis
C. Carraway

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

April 16, 1994

Mr. June Mike,
Chair 29 Palms General Council
c/o Glen Calac 1150 E. Palm Cyn. Drive
Palm Springs, California 92262

Dear Mr. Mike:

The Clean Air Act Amendments of 1990 provide for a new operating permits program (for stationary sources of air pollution) which we expect to result in improved air quality nationwide. Under this program, States have new requirements for issuing operating permits to major stationary sources of air pollution. Those permits are to contain the air pollution control requirements of the Clean Air Act (Act) which apply to the source. States are required to submit their operating permits programs to the U.S. Environmental Protection Agency (EPA) for approval.

This letter is one of several ways in which EPA is alerting Tribes to the opportunity they have to develop and administer their own operating permits programs under the Act. The enclosed fact sheet provides basic information on the Act's requirements for operating permits programs. Also, this letter notifies Tribes about a Federal regulation which EPA is currently developing (the Federal Operating Permits Program rule) that may affect sources of air pollution on Tribal lands.

Unlike States, Tribes are not required to submit operating permits programs to EPA. However, the EPA strongly encourages Tribes to take on this responsibility where feasible. The EPA will consult with Tribes to identify their particular needs for air program development assistance and will provide developmental financing and ongoing technical assistance, as necessary. This policy is outlined in a rule which EPA is currently developing, entitled "Indian Tribes: Air Quality Planning and Management." Where Tribes decide to establish Tribal operating permits programs, they must cover all lands within the exterior boundaries of the reservation and any off-reservation land over which the Tribe has established its jurisdiction. Sources would submit application forms and be issued permits by the Tribe.

The permit holders will be required to pay fees sufficient to cover the permit program costs. The procedures for issuing and revising permits will generally be the same as the minimum standards that EPA set for approving State permits programs. Tribes which are interested in developing operating permits programs are encouraged to contact the appropriate EPA Regional Office, if they have not already done so.

If, after some reasonable time, EPA's efforts to assist Tribes in developing Tribal operating permits programs do not, in fact, lead to Tribal program development and approval, EPA plans to administer the operating permits program on Tribal lands. The EPA is currently developing the Federal Operating Permits Program rule, a regulation which outlines how EPA will administer the program when a Tribe does not choose to develop an approvable operating permits program or when an approved program is not being properly administered. The proposed rule will also apply to States.

The draft Federal Operating Permits Program rule provides that after consultation with the Tribe and prior to establishing a permits program for sources on Tribal lands, EPA will publish a notice in the Federal Register informing the public of the operating permits program and the effective date of the program.

Under the draft rule, EPA may authorize a Tribe to take responsibility for some or all of the administration of the Federal operating permits program. Using its delegation authority, EPA may forge a partnership with a Tribe which allows the Tribe to incrementally assume greater responsibility for the program, as its expertise increases.

We would appreciate any comments you might have concerning the broad outlines of the rule described above. Please direct questions and comments to Ms. Candace Carraway, Office of Air Quality Planning and Standards, Mail Drop 15, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Her telephone number is (919) 541-3189.

There will be at least one more opportunity for Tribes to comment on the rule. The proposed rule is scheduled for publication in the Federal Register in early fall of this year and will be codified at 40 CFR part 71. After the proposed rule is published, public comments will be accepted during the comment period (probably 60 days), and EPA will conduct a public hearing on the proposal. The EPA will consider all comments in preparing a final rule. Also, we are exploring other ways of seeking input on this draft rule from Indian Tribes and seek your input as to how this may be best accomplished.

Thank you for your assistance in this regard.

Sincerely,

Kirtley Q. Co Chief
Operating Permits Policy Section
Permits Programs Branch

Enclosure

cc: S. Hitte
E. Lillis
C. Carraway
T. Parker
J. Kurtzweg

FACT SHEET

STATE OPERATING PERMITS PROGRAMS UNDER THE CLEAN AIR ACT

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What is the new Clean Air Act (Act) operating permits program?

One of the major breakthroughs in the Clean Air Act Amendments of 1990 is a permit program for larger sources that release pollutants into the air.

Under the new program, permits are issued by States and Tribes or, when they do not carry out the Act satisfactorily, by the Environmental Protection Agency (EPA). The permit includes information on which pollutants are being emitted (released), how much may be emitted, and what kinds of steps the source's owner or operator is taking to reduce pollution, including plans to monitor (measure) the pollution.

How will industry benefit from the permits program?

The permit system is especially useful for businesses covered by more than one part of the law, since information about all of a source's air pollution control requirements will now be in one place. The permit system simplifies and clarifies industry's obligations for cleaning up air pollution. For instance, an electric power plant may be covered by the acid rain, hazardous air pollutant, and nonattainment (smog) parts of the Act. The detailed information required by all these separate sections will be in the permit.

How will air quality be improved under the permits program?

Since permits will contain all of the source's requirements in one place and since sources will have to submit regular monitoring reports to the State, the public and the State will be able to monitor whether sources are meeting the terms of their permits. The EPA expects this oversight to lead to better compliance by the source and better enforcement.

How will States and Tribes pay for the permits program?

Businesses seeking permits have to pay permit fees, much like car owners paying for car registrations. The money from the fees must cover the cost of developing and administering the operating permits program. Although fees vary from State to State, many States are setting fees at around \$25 per year (adjusted for inflation) for each ton of regulated air pollutant

emitted by the source (for the first 4,000 tons emitted). When EPA reviews State fee programs, EPA will generally presume that this fee level is sufficient to cover the cost of a State program.

When are States required to develop their permits programs?

States were required to submit operating permits programs to EPA by November 15, 1993. The EPA has issued rules specifying the minimum requirements for State permits programs, in 57 FR 32,250 (July 21, 1992). For example, States must show they have the legal authority to collect permit fees sufficient to cover the permit program costs, to provide adequate enforcement, and to provide opportunity for public review and comment during the permitting process. The EPA has 1 year in which to approve a State's program, at which time it becomes effective. Sources must submit applications for permits within 1 year of the effective date.

What happens if the State program does not meet all of EPA's requirements?

If a State fails to submit an adequate program, EPA is required by the Act to disapprove it. Also, EPA must impose sanctions (such as restricting the use of highway funds) 18 months after the State's failure to submit an approvable program. The EPA must implement a Federal permits program in November 1995 if a State still has not received program approval.

State programs that substantially meet the regulatory requirements may be granted interim approval by EPA. To obtain interim approval, programs must satisfy a number of minimum requirements. States granted interim approval will have up to 18 months to correct deficiencies in their programs.

Which types of air pollution sources must be covered by the permits program?

Operating permits programs must cover all large (major) sources of air pollution. At the States' option, permits for certain nonmajor sources are not required during the first 5 years of the permits program.

What types of requirements will be contained in the permits?

Each permit must incorporate terms and conditions to assure that the source complies with or meets each requirement that applies to the source. Such requirements would include emissions

limits and control technologies required by the State implementation plan, Federal new source performance standards, Federal acid rain rules, Federal rules relating to hazardous air pollutants, and Federal rules that require sources to monitor and submit reports on their emissions.

What requirements apply to Indian Tribes which want to develop their own operating permits programs?

First, an Indian Tribe must meet EPA's eligibility criteria for administering an operating permits program under the Act. A Tribe may meet these criteria by demonstrating that (1) it is a federally-recognized Tribe, (2) has a governing body carrying out substantial governmental duties and powers, and (3) it identifies the exterior boundaries of the reservation or demonstrates its authority over off-reservation lands. In addition, EPA will make a determination that a Tribe is reasonably expected to be capable of carrying out an operating permits program.

The EPA is developing a rule called "Indian Tribes: Air Quality Planning and Management," which outlines the ways in which a Tribal permitting program may differ from the requirements that States must follow. The existing Federal rule for State operating permits programs will be revised to account for these differences. In general, Tribal permits programs would look much the same as State programs. One major difference is that Tribes will not be subject to sanctions if they decide not to develop an operating permits program or if they develop one after the deadline which applies to State programs. Also, the time frame for developing an approved program is different. States must develop approvable programs by November 1994. Tribes will be given a reasonable time to develop their operating permits programs.